

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 353 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDBHAI VIRCHANDBHAI RAWAL

Versus

S. B. CHAUHAN - DELETED AS PERCOURT'S ORDER

Appearance:

MR ASHOK L SHAH for Petitioner
MR BR SHAH for Respondent No. 2
MR KM PARIKH for Respondent No. 3

CORAM : MR.JUSTICE H.R.SHELAT
and
MR.JUSTICE H.H.MEHTA

Date of decision: 11/04/2000

ORAL JUDGEMENT

(Per H.R. Shelat, J.)

Being aggrieved by the judgement and award dated 16.4.1984 passed by the then learned Chairman of the MAC Tribunal (Main) Ahmedabad Rural at Mirzapur awarding compensation of Rs.67,600/- against the total claim of Rs.1,50,000/- the present appeal is preferred by the appellant for getting disallowed claim.

2 Necessary facts leading to the present appeal may in brief be stated. On 11.11.1981 the appellant was working as a labourer on a camel cart. The iron gates were to be transported from Pansar to Ahmedabad by the cart. When the camel cart reached near Adalaj on 12.11.1981 one truck bearing no. GRW 92 came from behind and hit the camel cart from behind, as a result, the appellant was thrown off and he sustained injuries. The camel cart was broken into pieces. The other persons in the cart were also injured. The appellant was taken to the hospital where during the medical treatment he had to undergo heavy expenses. He was also required to spend heavily for medicines, nursing and care conveyance, special diet, etc. To make the loss good, he filed MAC Petition No.221 of 1982 in the MAC Tribunal (Main), Ahmedabad (Rural) at Narol for the compensation of Rs.1,59,000/-. The Tribunal after recording the evidence awarded Rs.67,600/- in all. The appellant thought that erroneously the rest of the claim was disallowed. For the disallowed claim he has filed this appeal.

3 The learned advocate representing the appellant challenges the award on few points. According to him both the lower limbs of the appellant were injured. Now the appellant is not in a position to work conveniently with the same fervor & strength. The Tribunal ought not to have reduced the disability by 50%.

4 Reading the copy of the judgement and evidence on record and especially the evidence of the Doctor, it appears that the disability is assessed at 50% and the Tribunal has assessed the monthly income of the appellant at Rs.300/- about which there is no dispute. Considering 50% disability which is certified by the Doctor, Rs.150/per month is taken to be the datum figure for assessing the compensation under the head "permanent partial disability." The yearly datum figure is therefore assessed at Rs.1800/-, and looking to the age of the appellant at the time of the incident 16 multiplier can be adopted, but in the case on hand the Tribunal has adopted 20 multiplier. Consequently, the appellant has been awarded Rs.36,000/- under the head "permanent

partial disability."

5 We have carefully perused the evidence. The doctor has assessed the disability at 50% and the same is not reduced to 50% for assessing the compensation. The contention in this regard is misconceived. Considering the appellant's age being 19 years on the day of incident multiplier which can be adopted would be 16, but in this case the Tribunal has adopted 20 multiplier. The assessment made cannot be said to be highly conservative as contended. The assessment is neither unjust nor improper. On the contrary, the appellant is getting something more than we think it fair and just. As the difference is not alarming but small, we do not think it proper to reduce the same.

6 It is the next contention of the learned advocate representing the appellant that under the head pain, shock and suffering an amount of Rs.75,000/- ought to have been awarded but the Tribunal has assessed the compensation conservatively and awarded only Rs.25,000/-. He contending accordingly urges us to award Rs.50,000/more under the head "pain, shock and suffering". No doubt, it becomes clear from the judgement and materials placed before us that two lower limbs of the appellant were injured but there is no evidence on record to show that because of the injury the applicant has become crippled, as paralysis later on development. In the absence of the evidence of the Doctor or other reliable evidence regarding the paralytic effect, we see no justification to award more amount than what has been awarded to the appellant. Looking to the period of hospitalisation and also the period during which he was required to take rest at home and the pain he experienced during that period because of the injuries, the amount awarded under the head of pain, shock and suffering is quite just and proper and no enhancement under that head is required to be granted.

7 Under the head of medical expenses, it is also the contention that the Tribunal took most conservative view by awarding only Rs.300/-. At least Rs.500/- ought to have been awarded. The learned Judge has assigned the reasons. According to him, the evidence for awarding Rs.500/- under the head "medical charges" is wanting on record. The evidence led on the contrary establishes that maximum amount which the appellant spent was Rs.300/- and the same has been awarded. When the appellant has led no evidence to show that he spent more, he cannot be awarded more amount in the appeal. On no

other ground the judgement and award passed by the Tribunal are assailed. On query, the learned advocate representing the appellant could not point out anything from the record in support of his above stated contentions.

8 In view of what is stated hereinabove, the judgement and award passed by the Tribunal seem to be just and proper. There is no reason to disturb the same. The appeal being devoid of merits, is required to be dismissed and is accordingly dismissed.

(mohd)